

# INDUSTRY CIRCULAR

OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE  
ALCOHOL AND TOBACCO TAX DIVISION



WASHINGTON 25, D. C.

Industry Circular No. 62- 9

March 23, 1962

## CLAIMS FOR UNMERCHANTABLE WINE RETURN TO BONDED WINE CELLAR FOR DESTRUCTION

Proprietors of bonded wine cellars  
and others concerned:

Purpose. This circular is issued to inform proprietors of bonded wine cellars of the provisions of Revenue Ruling 62-25, published in Internal Revenue Bulletin No. 9, February 26, 1962. This ruling concerns claims for refund or credit of tax on unmerchantable wine received at a bonded winery for destruction under section 5361, Internal Revenue Code.

Background. Section 5044 of the Code provides, in part, that in the case of any wine produced in the United States and returned to bond as unmerchantable under section 5361 of the Code, any tax imposed by section 5041 of the Code shall, if paid, be refunded or credited, without interest, to the proprietor of the bonded wine cellar to which such wine is delivered.

Section 5361 provides, in part, that the proprietor of a bonded wine cellar may receive unmerchantable taxpaid wine for destruction.

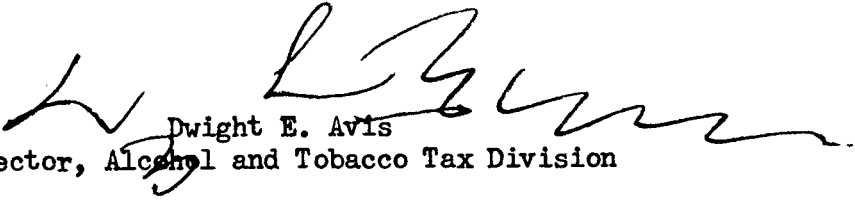
Section 5371 provides that any refund or credit of, or other relief from, taxes on wines or wine spirits authorized by law shall be allowed only to the extent that the claimant is not indemnified or recompensed for the tax.

Any claim for credit or refund of tax on unmerchantable wine returned to a bonded wine cellar must be filed by the proprietor of the bonded wine cellar to which the wine has been returned. The proprietor filing the claim need not be the one who paid the tax on the wine. However, the burden of proof that the wine has been taxpaid lies with the claimant proprietor. The claim may be allowed only to the extent that the claimant is not indemnified or recompensed for the tax.

In a somewhat similar case, Revenue Ruling 60-201, C.B. 1960-1, 712, precludes the allowance of a claim for refund or credit of tax to a brewer who does not give a credit allowance to his customer for beer removed from the market. The brewer is considered indemnified for the tax by the customer through payment for the beer.

Effects of Ruling. Under Revenue Ruling 62-25, the proprietor of the bonded wine cellar to which the unmerchantable wine was returned was not the taxpayer and did not purchase the wine at a price reflecting the tax; neither did he allow to the person returning the wine a credit in an amount equal to the tax paid on such wine. To allow the proprietor credit or refund of tax would constitute unjust enrichment since he neither directly nor indirectly bore the burden of the tax. Accordingly, since it is not the intent of the statute to provide relief to a person who did not bear the burden of the tax, claims for credit or refund in such cases are not allowable.

Inquiries. Inquiries concerning this circular should refer to its number and be addressed to your Assistant Regional Commissioner, Alcohol and Tobacco Tax.

  
Dwight E. Avis  
Director, Alcohol and Tobacco Tax Division